

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

### **I. DISPUTE**

1. a. Whether there should be additional reimbursement for date of service (DOS) 06/21/01?  
b. The request was received on 05/13/02.

### **II. EXHIBITS**

1. Requestor, Exhibit I:
  - a. TWCC-60 and Letter Requesting Dispute Resolution dated 06/12/02
  - b. HCFA-1450s
  - c. EOBs
  - d. Reimbursement data
  - e. Medical Records
  - f. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
2. Per Rule 133.307 (g)(3), the Division forwarded a copy of the requestor's 14-day response to the insurance carrier on 06/26/02. Per Rule 133.307 (g)(4), the carrier representative signed for the copy on 07/02/02. The response from the insurance carrier was received in the Division on 07/16/02. Based on 133.307 (i) the insurance carrier's response is untimely and the Commission shall issue a decision based on the request.
3. Notice of Medical Dispute is reflected as Exhibit III of the Commission's case file.

### **III. PARTIES' POSITIONS**

1. Requestor: letter dated 06/12/02  
"We feel that 28% paid on a right shoulder arthroscopy with acromioplasty, bursectomy and release of CA ligament is not fair or reasonable. We feel that (Carrier) should reimburse us more appropriately as \$2236.00 does not cover our costs to perform this procedure."

### **IV. FINDINGS**

1. Based on Commission Rule 133.307(d)(1&2), the only date of service (DOS) eligible for review is 06/21/01.
2. The provider, an ambulatory surgery center, billed a total of \$8,073.25 on the DOS in dispute.

3. The carrier reimbursed \$2,236.00 and the EOB has the denial “M – NO MAR, REDUCED TO FAIR & REASONABLE.”
4. The total amount in dispute per the TWCC-60 is \$5,837.25.

## **V. RATIONALE**

The medical documentation indicates the services were performed at an ambulatory surgery center. Commission Rule 134.401(a)(4) states ASCs, “shall be reimbursed at a fair and reasonable rate...”

Section 413.011(d) of the Texas Labor Code states, “Guidelines for medical services must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fees charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual’s behalf. The Commission shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines.”

Commission Rule 133.304(i)(1-4) places certain requirements on the carrier when reducing the billed amount to fair and reasonable. The carrier’s response was submitted untimely and is not considered.

Commission Rule 133.307(g)(3)(D) requires the provider to supply documentation that discusses, demonstrates, and justifies that the payment amount being sought is a fair and reasonable rate of reimbursement. The provider has submitted several EOBs from other carriers that show a higher percentage of the billed amount reimbursed. The provider uses these EOBs as examples of fair and reasonable reimbursement.

Regardless of the carrier’s untimely response, carrier’s methodology or application of its methodology, under the Act, there must be specific statutory authorization to create liability through waiver. The burden is on the provider to show that the amount of reimbursement requested is fair and reasonable and conforms to the criteria identified in Sec. 413.011(b) of the Texas Labor Code.

To establish entitlement to additional reimbursement the provider has submitted EOBs indicating other carriers have reimbursed a higher percentage of the billed amount. However, the willingness of some carriers to provide reimbursement at or near the billed amount does not necessarily document that the billed amount is fair and reasonable and does not show how effective medical cost control is achieved, a criteria identified in Sec. 413.011(d) of the Texas Labor Code. Therefore, based on the documentation available for review, the Requestor has not established entitlement to additional reimbursement.

MDR: M4-02-3487-01

The above Findings and Decision are hereby issued this 26<sup>th</sup> day of August 2002.

Larry Beckham  
Medical Dispute Resolution Officer  
Medical Review Division

This document is signed under the authority delegated to me by Richard Reynolds, Executive Director, pursuant to the Texas Workers' Compensation Act, Texas Labor Code Sections 402.041 - 402.042 and re-delegated by Virginia May, Deputy Executive Director.